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October 5, 1995

William F. Caton, Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

Attention: Donna L. Kanin

RE: IVDS Construction Deadlines  
WT Docket No. 95-131  
Comments of ITV, Inc. and IVDS Affiliates, LLC

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

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Dear Mr. Caton:

Enclosed on behalf of ITV, Inc. ("ITV") and IVDS Affiliates, LLC, ("IALC") are the original and nine copies of Reply Comments filed in the above captioned proceeding.

Please contact this law firm if you have any questions with respect to this matter.

Respectfully submitted,



William J. Franklin  
Attorney for ITV, Inc. and  
IVDS Affiliates, LLC

Encls.  
WJF/mtf  
cc: ITV, Inc.  
IVDS Affiliates, LLC

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OCT 5 - 1995

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 )  
Amendment of Part 95 of the )  
Commission's Rules to Modify )  
Construction Requirements for )  
Interactive Video and Data )  
Service (IVDS) Licenses )

WT Docket No. 95-131

DOCKET FILE COPY ORIGINAL

To: The Commission

**REPLY COMMENTS OF ITV, INC. AND IVDS AFFILIATES, LLC**

ITV, Inc. ("ITV") and IVDS Affiliates, LLC ("IALC"), by its attorney and pursuant to Section 1.415 of the Commission's Rules hereby replies to comments on the Commission's above-captioned Notice of Proposed Rulemaking<sup>1/</sup> and makes a supplementary proposal which would satisfy the legitimate policy goals of the Commission's proposal.

In their comments, ITV and IALC supported the Commission's proposal to eliminate the one-year construction deadline for all Interactive Video and Data Service ("IVDS") licensees, but only in the context of strict enforcement of all additional IVDS deadlines.

At present, Section 95.833(a) of the Commission's Rules specifies that each IVDS licensee must make service available to at least 10 percent of the population or geographic area within its license service area within one year of the grant of the

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<sup>1/</sup> 10 FCC Rcd \_\_\_\_\_ (FCC 95-318, released August 14, 1995), as corrected by Erratum (Mimeo No. 55319, released August 14, 1995) ("NPRM").

license, 30 percent within three years, and 50 percent within five years. The NPRM proposes to amend Section 95.833(a) of the Commission's Rules to eliminate the one-year construction "build-out" requirement for IVDS licensees, but to retain the three-year and five-year construction benchmarks.

In order to get the IVDS industry moving, ITV and IALC respectfully suggest that the Commission amend the one-year deadline to be a **two-year deadline** to initiate IVDS service.

This amendment would require the IVDS lottery winners (including ITV) to initiate service by March 23, 1996. This change should not be burdensome; all the lottery winners were ready to initiate some form of limited IVDS service prior to March 23, 1995 (their previous one-year deadline). Indeed, one licensee initiated service, but discontinued it when the Commission waived the one-year deadline. Similarly, ITV's system has completed successful field tests in the San Francisco market. Since then, other lottery winners have begun to move forward with their systems.<sup>2/</sup>

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<sup>2/</sup> See, e.g., Kingdon R. Hughes, 10 FCC Rcd \_\_\_\_ (DA 95-1732, released August 11, 1995) (Wireless Tel. Bureau) (¶3) (Philadelphia licensee developed bank ATM communications system for IVDS); IVDS Payment Waivers, 10 FCC Rcd \_\_\_\_ (FCC 95-367, released September 1, 1995) (¶6) (five manufacturers have type-accepted IVDS equipment); Public Notice "Comment Sought on Requests for IVDS Rule Waivers", 10 FCC Rcd \_\_\_\_ (DA 95-2099, released July 27, 1995) (Houston licensee requests rule waivers in order to implement its system); Public Notice "Comment Sought on Requests for IVDS Rule Waivers", 10 FCC Rcd \_\_\_\_ (DA 95-1647, released July 27, 1995) (New York licensee and the other Houston licensee request rule waivers in order to restructure their business prior to construction).

This amendment would require the IVDS auction winners to initiate service in either February or March, 1997, depending upon their license grant date. This delay is sufficient for the lottery winners to demonstrate the function of their respective IVDS systems and competing technologies, but not so long that all IVDS development will halt. Thus, the amendment will permit the auction winners also to initiate their service in a timely fashion.

As ITV and IALC warned in their comments, the Commission faces a "chicken-and-egg" problem. If there is no equipment, construction deadlines cannot be satisfied through no fault of the licensees. But if there are no construction deadlines, then licensees will not order IVDS equipment. If there are no orders, equipment manufacturers cannot afford to develop IVDS equipment which they cannot sell.

Adoption of the deadline proposed herein will break this deadlock, and thus serve the public interest.

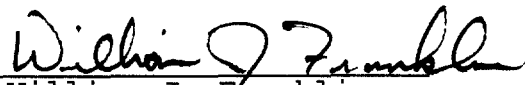
#### **CONCLUSION**

Subject to adoption of a policy of strict enforcement of further IVDS deadlines, ITV and IALC support the Commission's proposal to eliminate the one-year construction deadline as set forth herein. The deadline should be replaced by a two-year

deadline. The Commission should also articulate a policy that all future IVDS construction and payment deadlines will be strictly enforced.

Respectfully Submitted,

**ITV, INC.**  
**IVDS AFFILIATES, LLC**

By:   
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Their Attorney

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## CERTIFICATE OF SERVICE

I, Trudy Jones, a legal assistant for the law firm William J. Franklin, Chartered, hereby certify that a copy of the foregoing Comments of ITV, Inc. and IVDS Affiliates, LLC was sent by U.S. mail, first-class postage prepaid, or by hand delivery if marked with an asterisk, this 5th day of October 1995 to:

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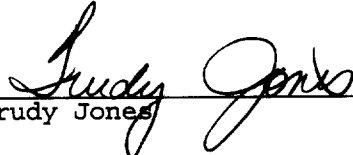
Mr. Andrew C. Barrett, Commissioner  
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